IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2430 OF 2005

WITH

WRIT PETITION NO.2432 OF 2005

Shri Sunil Bhikaji Chopade and others ... Petitioners

v/s

Shri Vishwasrao R. Chopade and anr. ... Respondents

Mr Umesh Mankapure i/b Mr R.V. More for Petitioners.

Mr P.K. Chavan i/b Mr S.S. Patwardhan for Respondent No.1.

CORAM : D.K. DESHMUKH J.

DATE : 24TH AUGUST 2005.

P.C. :-

1. Rule, returnable forthwith. Heard finally by consent of parties.

2. By both these petitions, same order passed by the Appeal Court is challenged. Therefore, both these petitions can be conveniently disposed off by common order.

3. Vishwasrao - present respondent No.1 filed civil suit claiming a declaration that he has 1/2 share in the suit property. The suit property consists of residential house and agricultural land. In that suit, he applied for temporary injunction restraining the defendants from disturbing his possession. The Trial Court decided the application. The Trial Court held that so far as the house property is concerned, it prima facie appears that Vishwasrao has share in that property, but so far as the agricultural land is concerned, he does not appear to have any interest and therefore, temporary injunction was granted by the Trial Court in favour of the plaintiff only in relation to the residential house.

4. Aggrieved by this order, so far as the

temporary injunction in relation to agricultural land is concerned, the plaintiff filed appeal before the Appeal Court and so far as the order granting temporary injunction in relation to the house property, the petitioners who were defendants filed the appeal. Both the appeals were decided by the Appeal Court by a common order. The Appeal Court confirmed the temporary injunction granted by the Trial Court in relation to the residential house and set aside the order passed by the Trial Court in relation to the agricultural land and granted temporary injunction in favour of the plaintiff in relation to the agricultural land also. The plaintiffs have therefore filed this petition challenging the order of the Appeal Court.

5. So far as the agricultural land is concerned, admitted position is that the land was originally owned by Ramchandra who was father of the plaintiff and grand-father of the defendants. Ramchandra transferred the land by a document dated 13th March 1946. That land was repurchased by Bhikaji, the predecessor of the defendants by document dated 17th April 1956. So far as the residential property is concerned, it was owned by Ramchandra and he continued to own the property till his death. The submission of the learned counsel appearing for petitioners is that as the property was sold by Ramchandra in the year 1946, he will cease to have

interest in the property and therefore, the plaintiff who claims to be the heir of Ramchandra will not have any interest in the agricultural land because the land was purchased by Bhikaji after the death of Ramchandra. At the time of his death, Ramchandra was not owner of the land and therefore, his heirs like plaintiff will not get any interest in the land. So far as the residential house is concerned, the learned counsel submitted that that property was also exclusively owned by Bhikaji and plaintiff has no interest in the property. The leaned counsel appearing for original plaintiff, on the other hand, submits that so far as the agricultural land is concerned, when the property was transferred by Ramchandra and it was purchased by Bhikaji he was a minor, therefore the land was purchased by Bhikaji on behalf of the family and plaintiff will get interest therein. It is clear from the record that the following is the admitted position :-

i) The agricultural land was owned by Ramchandra.

ii) He transferred that land by document dated 13th March 1946.

iii) Ramchandra died in the year 1955.

iv) By deed dated 17th April 1956, Bhikaji purchased the land. It is an admitted position that parties are christian by religion.

. It is clear from the above referred admitted position that as the plaintiff is claiming interest in the agricultural land only as heir of Ramchandra and as at the time of his death, Ramchandra did not have any interest in the agricultural land, Vishwasrao will not inherit any interest in the land from Ramchandra. Therefore, prima facie it appears that Vishwasrao does not have prima facie case so far as his case for share in the agricultural land is concerned. The appeal Court in paragraph 10 of the order has observed that the land was acquired by Bhikaji on behalf of the entire family. The Appeal Court, however, has not considered that the parties are not governed by Hindu Law where there is a concept of family owning land and that they are Christian by religion. The Appeal Court has also not indicated as to what is the basis for holding that Bhikaji acquired the land not for himself but for the benefit of the entire family. It is thus clear that the order of the appeal Court so far as the agricultural land is concerned, is not correct. The Appeal Court has excluded from its consideration material facts as also the law. So far as the house property is concerned,

both the Courts have concurrently found that Vishwasrao prima facie appears to have share in the house property. I find no error in that finding. In the result therefore, both the petitions are disposed off. The order passed by the appeal Court dated 14th March 2005 is modified. It is directed that the temporary injunction passed by the Trial Court in relation to the house property to continue during the pendency of the suit, however, there shall not be any temporary injunction in relation to the agricultural land which is the suit property. rule is made absolute accordingly.

No order as to costs.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.